PURCHASE ORDER TERMS & CONDITIONS

A. **DEFINITION AND ACCEPTANCE OF TERMS**: Purchaser shall mean MTDB, SDTC, and SDTI; and Vendor shall mean the person and/or company from whom the merchandise, goods, equipment or services described herein (hereinafter "merchandise" or "service") are ordered as shown on the face hereof. This Purchase Order constitutes an offer by Purchaser to Vendor upon the terms and conditions stated herein and shall become a binding contract upon acceptance thereof either by acknowledgement or performance. This Purchase Order shall not be modified unless made in writing as a change or new purchase order signed by Purchaser. Failure of Purchaser to insist upon strict performance of any of the terms and conditions of this Purchase Order shall not constitute a waiver of such terms and conditions or a waiver of any default.

B. **PRICING**: All cash discounts shall be taken and computed from the date of delivery or completion and acceptance of the merchandise or from the date of receipt of the invoice, whichever is later. Vendor warrants that the prices for the merchandise sold to Purchaser under this Purchase Order are not less favorable than those currently extended to any other customer for the same or like merchandise in equal or less quantities. If Vendor reduces its price for such merchandise during the term of this Purchase Order, Vendor must reduce the prices for the merchandise under this Order accordingly.

C. **TAXES**: Except as otherwise expressly provided herein, the contract price is deemed to include all federal, state, and local sale/use tax (including fees and charges) which would be payable in respect to this order. Purchaser is exempt from Federal Excise and Transportation Taxes. On out-of-state purchases, the Vendor must show their Use Tax Permit Number issued by the California State Board Equalization, which authorizes them to charge and collect California sales tax.

D. **DELIVERY**: Vendor must immediately advise Purchaser if there is any delay or shortage in shipment, or of a partial shipment and date full shipment will be delivered. All merchandise described herein must be delivered within the time specified on this Purchase Order, or the revised delivery schedule approved by Purchaser in writing. If not delivered by date specified, a time extension may be granted by Purchaser or this Purchase Order may be cancelled at Purchaser's option and Purchaser will be under no obligation to accept or pay for any merchandise or service. Delivery shall be made between 8:00 a.m. and 4:00 p.m. local time on weekdays unless otherwise agreed by Purchaser. No charge will be allowed for cartage, pallets, boxing or packaging, unless by special agreement showing on the face of this Purchase Order. Unless otherwise specified herein, all merchandise acquired under this Purchase Order is sold F.O.B. location specified by purchaser. All transportation costs and shipping charges must be pre-paid by Vendor. An original copy of the freight bill must be attached to the invoice. Vendor is not authorized to ship the merchandise under a reservation and no tender of a bill of lading shall operate as a tender of the merchandise. COD shipments are expressly prohibited.

E. **INSPECTION/ACCEPTANCE OR REJECTION OF MERCHANDISE**: Inspections and acceptance or rejection of the merchandise will be at the delivery location unless otherwise specified. Purchaser will inspect the merchandise and either accept or reject it within 30 days from the date of delivery. If any specified inspection or testing is required to determine if the merchandise meets the specifications, Vendor shall perform or have performed such inspections and tests at Vendor's sole cost. Any merchandise received damaged or not in accordance with the instructions or specifications on the Purchase Order will be rejected and returned to Vendor at Vendor's risk and expense. Purchaser will notify the Vendor either orally or in writing stating the reason(s) why the merchandise is deemed damaged or non-conforming. Vendor will have 10 calendar days from the date of notice, or such further reasonable time as may be specified in the notice to deliver conforming merchandise. Purchaser will hold the damaged or non-conforming merchandise for a reasonable time not to exceed 30 days and Vendor must remove the rejected merchandise at Vendor's sole cost and expense. Purchaser will not be obligated to give Vendor more than one opportunity to cure. Nothing herein shall be construed to modify or extend the delivery schedule specified.

F. **RISK OF LOSS**: Vendor will bear all costs and assume all risk and liability associated with delivery of the merchandise. Vendor will bear all risk of loss or damage of the merchandise manufactured by Vendor for Purchaser under this Purchase Order from any casualty to such merchandise, regardless of the cause thereof until Purchaser accepts delivery of the merchandise.

G. **INDEMNIFICATION**: Vendor must defend, indemnify and hold harmless Purchaser, its officers, employees, customers, and the users of its merchandise from all loss, damage, claims, actions or proceedings including attorney's fees and court costs resulting from any injury or death to persons or damage to property caused by any defects in the merchandise supplied by Vendor or resulting from any claim of infringement of any patent, trademark or copyright arising out of the sale or use of any merchandise furnished by Vendor. Vendor also must defend, indemnify and hold harmless Purchaser from and against any liability expense resulting from: (1) any alleged or claimed defect in the merchandise, whether latent or patent, including allegedly improper construction or design; (2) the failure of merchandise to comply with specifications; (3) any expenses or implied warranties of Vendor; or (4) any violation of any statue, ordinance, administrative order, rule or regulation related to the manufacture or sale of the merchandise.

H. **WARRANTIES**: By accepting this offer, Vendor warrants that: (1) all merchandise delivered under this Purchase Order will be "merchantable" as defined in Section 2-314 of the Uniform Commercial Code and free from defects in materials and workmanship (including damage due to unsatisfactory packaging by Vendor); (2) the merchandise will be manufactured and delivered strictly in accordance with Purchaser's specifications, drawings, and approved sample, if any; and (3) the merchandise will be free from defects in design. Vendor agrees that the merchandise furnished under this Purchase Order will be covered by the most favorable commercial warranties the Vendor gives to any customer for the same merchandise. Purchaser's rights and remedies as set out herein are in addition to and not limited by any rights Purchaser may have under any other term of this Purchase Order or provision of law.

I. **MATERIAL SAFETY DATA SHEET**: It is mandatory for Vendor to supply an MSDS with the first shipment of any merchandise that contains any hazardous material. Also, at any time the content of an MSDS is revised, Vendor is required to provide the new information relevant to the specific hazardous material to Purchaser.

J. **TERMINATION**: Purchaser may terminate this Purchase Order for its convenience in whole or part as to any undelivered merchandise and any unperformed work by written or telegraphic notice. Purchaser, at its option, may purchase the merchandise from other sources and/or require the Vendor to transfer title and deliver to Purchaser any completed merchandise that is acceptable and such work that is in process as the Vendor has specifically produced or specifically acquired for the performance of such part of the order as has been terminated. Purchaser and Vendor shall negotiate an equitable settlement payment for the terminated portion consisting of Vendor's cost to date of termination plus a reasonable profit thereon.

K. **CANCELLATION**: Purchaser may cancel this Purchase Order in whole or in part by written or telegraphic notice if: (1) Vendor becomes insolvent or makes a general assignment for the benefit of creditors, or a receiver/liquidator is appointed or applied for, or Vendor admits in writing its inability to pay its debts as they become due; or (2) any proceeding under any applicable federal or state bankruptcy or insolvency law is brought by or against Vendor; or (3) Vendor defaults in the performance of any term or condition which it is obligated to perform hereunder. If the cost of completion of the order is in excess of the contract price, then the Vendor shall be liable for such excess. However, except with respect to default of subcontractors, the Vendor will not be liable for any excess costs if the failure to perform arises out of causes beyond control and without the fault or negligence of the Vendor or its subcontractors, unless the merchandise or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to comply with the order. The rights and remedies of Purchaser as provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase order.

L. **ASSIGNMENTS AND SUBCONTRACTORS**: Neither this agreement nor any interest herein nor claim hereunder may be assigned by Vendor either voluntarily or by operation of law, nor may all or substantially all of this agreement be further subcontracted by Vendor without the prior written consent of Purchaser. No consent shall be deemed to relieve Vendor of its obligations to comply fully with the requirements hereof.

M. **FEDERAL STATE AND LOCAL LAWS**: Vendor warrants that in the performance of this agreement it shall comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder.

N. **EQUAL EMPLOYMENT OPPORTUNITY**: In connection with the execution of this agreement, Vendor shall not discriminate against any employee or applicant because or race, religion, color, gender, marital status or national origin. Vendor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, gender, marital status or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

O. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**: In connection with the performance of this agreement, Vendor will cooperate with Purchaser in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises, and Vendor will use its best efforts to insure that Disadvantaged Business Enterprises shall have an equitable opportunity to compete for subcontract work under this agreement if federal funds are used for the purchase.

P. **AUDIT AND INSPECTION OF RECORDS**: Vendor shall provide Purchaser such access to Vendor's books, records and facilities as may be deemed necessary to examine, audit, and inspect all work data, documents and activities related to the goods or services described herein. Vendor shall maintain such books, records, data, documents and activities related to the goods or services described herein. Vendor shall maintain such books, records, data and documents on a generally accepted accounting basis and shall clearly identify and make such items readily accessible to such parties during Vendor's performance hereunder and for a period of three (3) years from the date of final payment by Purchaser hereunder.

Q. **ENTIRE AGREEMENT, NO ORAL MODIFICATIONS**: This agreement constitutes the entire agreement and understanding between Purchaser and Vendor, and supercedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth in this agreement. Any amendments to this agreement must be in writing and executed by both parties hereto.

R. **INTEREST**: Purchaser does not authorize, and shall not pay any interest charges for late payments of invoices, provisions stated on packing lists, invoices, or other documents to the contrary notwithstanding.

S. **CHANGES**: Purchaser may, at any time, by written notice and without notice to the sureties or assignees, make changes within the general scope of this Purchase Order in any one or more of the following: (1) drawings, designs, or specifications; (2) method of shipping or packing; (3) place of delivery; (4) delivery schedule. Should any such change increase or decrease the cost of, or the time required for performance of this Purchase Order, proper adjustments shall be made in price or delivery schedule or both, as the case may be. No claim by Vendor or such adjustment will be valid unless received by Purchaser within 30 days from date of such change, or such longer period, as may be authorized by Purchaser in writing. Nothing contained in this clause shall relieve Vendor from proceeding without delay in the performance of this Purchase Order as changed.

T. **LABOR DISPUTES**: Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Vendor will immediately give notice thereof to Purchaser.

U. **ADVERTISING and/or PUBLICITY AUTHORIZATION**: Vendor shall not, without prior written consent of Purchaser, publish, assert, or imply that Purchaser endorses the Vendor's product or service.

V. **CODE OF CONDUCT**: The parties hereto covenant agree that to their knowledge no Board member, officer, or employee of Purchaser has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Vendor and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such confirmation will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title 1 of the Government Code of the State of California.

W. **INDEPENDENT CONTRACTOR**: In the performance of any services to be provided hereunder, Vendor's relationship to Purchaser shall be that of an independent Contractor and not an employee, agent or other representative of Purchaser.